

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DARIUS ASHLEY,

Plaintiff,

vs

9:07-CV-182

SERGEANT KRAMER, et al.

Defendants.

APPEARANCES:

OF COUNSEL:

DARIUS ASHLEY
Plaintiff, pro se
05-A-6178
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953

CORRIGIAN, McCOY LAW FIRM
Attorneys for Defendants
220 Columbia Turnpike
Rensselaer, NY 12144

ROBERT P. ROCHE, ESQ.

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On March 17, 2009, the Honorable Gustave J. DiBianco, United States Magistrate Judge, advised, by Report-Recommendation, that defendants' motion for summary judgment be denied without prejudice to re-submit in proper form pursuant to the Local Rules. No objections to the Report-Recommendation were filed.

Defendants' motion for summary judgment was filed on August 28, 2008. Careful review of the motion reveals that defendants are entitled to summary judgment. Moreover, despite at least two extensions of time in which to do so, plaintiff failed to oppose the defendants' motion. Additionally, defense counsel has apologized for the form of his papers and indicated a willingness to refile. Thus, although it has been recommended that the motion be denied without prejudice to refile in proper form, in the interest of judicial efficiency the motion for summary judgment will be granted.

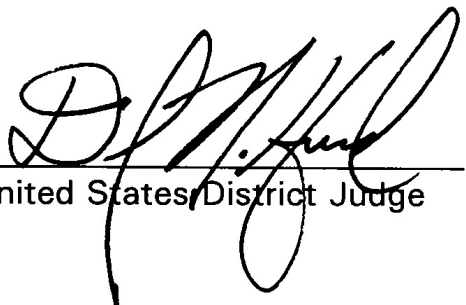
Therefore, defendants' having established entitlement to judgment as a matter of law in their favor and plaintiff having failed to oppose the motion, the Report-Recommendation of the Magistrate Judge is rejected. See 28 U.S.C. § 636(b)(1).

Accordingly, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED, and
2. The complaint is DISMISSED in its entirety.

The Clerk is directed to enter judgment accordingly.



United States District Judge

Dated: April 2, 2009
Utica, New York.